

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Enoch Sowah	Team: Squad #1	CCRB Case #: 201909887	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 11/04/2019 7:00 PM	Location of Incident: Southeast corner of Sutphin Boulevard and 109th Avenue	Precinct: 103	18 Mo. SOL 5/4/2021	EO SOL 12/19/2021	
Date/Time CV Reported Mon, 11/11/2019 8:28 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 11/11/2019 8:28 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Edwin Espinal	03384	934831	103 PCT
2. POM James Holder	18361	951823	103 PCT
3. POM Brandon Grasser	14283	955961	103 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Kevin Nicoll	19740	958984	103 PCT
2. POM Brian Heisinger	22186	952839	103 PCT
3. POM Christophe Denicker	13661	955867	103 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM James Holder	Abuse: Police Officer James Holder frisked § 87(2)(b)	
B.POM James Holder	Abuse: Police Officer James Holder searched § 87(2)(b)	
C.SGT Edwin Espinal	Abuse: Sergeant Edwin Espinal searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
D.POM James Holder	Abuse: Police Officer James Holder searched § 87(2)(b)	
E.POM Brandon Grasser	Abuse: Police Officer Brandon Grasser searched § 87(2)(b)	
F.SGT Edwin Espinal	Abuse: Sergeant Edwin Espinal searched § 87(2)(b)	

Case Summary

On November 11, 2019, § 87(2)(b) filed this complaint via the CCRB website on behalf of her brother, § 87(2)(b) and her cousin, § 87(2)(b).

On November 4, 2019, at approximately 6:15 p.m., in the vicinity of Sutphin Boulevard and 109th Avenue in Queens, Police Officers Kevin Nicoll, James Holder, and Brandon Grasser, all from the 103rd Precinct, stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants. PO Holder frisked and searched § 87(2)(b) (**Allegation A and B: Abuse of Authority, § 87(2)(g)**). Sergeant Edwin Espinal, of the 103rd Precinct, searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants (**Allegation C: Abuse of Authority, § 87(2)(g)**). PO Holder, PO Grasser, and Sgt. Espinal searched § 87(2)(b) (**Allegations D, E, and F: Abuse of Authority, § 87(2)(g)**).

§ 87(2)(b) was arrested for § 87(2)(b) which stemmed from an open warrant. He was also charged with § 87(2)(b) (Board Review 01). None of the other occupants of the vehicle were arrested or summonsed as a result of this incident.

Nine police body worn camera videos were received from six police officers for this incident (Board Review 02 – Board Review 10).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer James Holder frisked § 87(2)(b)
Allegation (B) Abuse of Authority: Police Officer James Holder searched § 87(2)(b)
Allegation (C) Abuse of Authority: Sergeant Edwin Espinal searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

It is undisputed that officers stopped § 87(2)(b) for driving a vehicle with defective headlights, and he was arrested on an unrelated open warrant. It is also undisputed that § 87(2)(b) had marijuana on his person, § 87(2)(b) was frisked and searched, and that officers searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

PO Nicoll's BWC (Board Review 02) shows PO Nicoll and PO Grasser approach the vehicle's driver's side, while PO Holder approaches the front passenger's side. The vehicle is parked on the side of a busy street. At 00:44, PO Nicoll orders § 87(2)(b) to produce his driver's license, registration, and insurance card. § 87(2)(b) appears to give PO Nicoll his driver's license. At 05:20, PO Nicoll walks away from § 87(2)(b)'s vehicle and approaches a second unmarked vehicle, which appears to have just arrived on scene. PO Nicoll speaks to the occupants in the vehicle, identified via investigation as Sergeant Edwin Espinal and Police Officers Brain Heisinger and § 87(2)(b) Denicker, but what is discussed is not audible. At 08:20, PO Nicoll returns to § 87(2)(b)'s driver's side and tells PO Grasser that § 87(2)(b) is under arrest. PO Grasser orders § 87(2)(b) to exit the vehicle. § 87(2)(b) says to the officers, "Oh, my warrant popped up huh?" PO Nicoll opens the driver's door, and § 87(2)(b) exits the vehicle. At 08:50, PO Nicoll says to § 87(2)(b) "It stinks of marijuana," while § 87(2)(b) exits his vehicle. § 87(2)(b) replies, "Yea, I got a bag of weed on me." PO Nicoll then appears to reach his hands inside and search § 87(2)(b)'s pockets. PO Nicoll also moves his hands around § 87(2)(b)'s upper and lower body on the outside of § 87(2)(b)'s clothing. At 10:30, PO Nicoll tells § 87(2)(b) that he is being arrested for "having a warrant," and "driving a vehicle with no headlights." [Frisk and search allegations were not pleaded on behalf of § 87(2)(b) because the footage established that § 87(2)(b) was under arrest for the open warrant (Board Review 01) at the time he was frisked and searched.] At 12:00, PO Holder and PO Grasser enter and search the vehicle's driver's and front passenger's sides, respectively. At 15:59, PO Grasser opens and searches the hood of the vehicle. At 17:55, PO Nicoll searches the rear seats of the vehicle. At 22:00, PO Holder opens and searches the vehicle's trunk. At 31:00, PO Nicoll, at the 103rd Precinct stationhouse, removes a small clear

bag containing what appears to be green leaves from § 87(2)(b)'s pocket and places it on the front desk (Board Review 03).

PO Holder's BWC (Board Review 04) at 09:00, shows PO Holder, PO Grasser, and Sgt. Espinal ordering § 87(2)(b) out of the vehicle's front passenger's seat. At 09:30, PO Holder appears to move his hands around § 87(2)(b)'s body on the outside of his clothing, and also appears to reach inside § 87(2)(b)'s pockets. PO Holder then escorts § 87(2)(b) to the trunk of the vehicle. § 87(2)(b) is not handcuffed.

Sgt. Espinal's BWC (Board Review 08) at 02:25, shows Sgt. Espinal telling § 87(2)(b) that the officers are searching him because of the odor of marijuana. § 87(2)(b) (Board Review 11) and § 87(2)(b) (Board Review 12) both acknowledged that § 87(2)(b) had marijuana on his person but did not recall if the vehicle smelled of marijuana.

The smell of marijuana is sufficient to provide officers with probable cause to search an automobile and its occupants, People v. Chestnut, 43 A.D 2d. 260 (1974) (Board Review 13).

§ 87(2)(g)

Allegation (D) Abuse of Authority: Police Officer James Holder searched § 87(2)(b)

Allegation (E) Abuse of Authority: Police Officer Brandon Grasser searched § 87(2)(b)

Allegation (F) Abuse of Authority: Sergeant Edwin Espinal searched § 87(2)(b)

It is undisputed that at some point during this incident, the officers could not find the key to the vehicle, and that PO Holder and PO Grasser searched § 87(2)(b) in an attempt to find the key to the vehicle. The officers ultimately found the keys inside Sgt. Espinal's pocket.

PO Nicoll's BWC (Board Review 02), at 12:00, shows him, § 87(2)(b), Sgt. Espinal, PO Heisinger, and PO Denicker, all standing by the trunk of § 87(2)(b)'s vehicle, while PO Holder and PO Grasser search the vehicle. § 87(2)(b) is handcuffed, and together with § 87(2)(b) who is not handcuffed, are facing the officers. At 12:29, § 87(2)(b) and her boyfriend, § 87(2)(b) arrive on scene, and appear to be standing on the sidewalk. At 13:50, PO Nicoll asks § 87(2)(b) if he has the key to the vehicle. § 87(2)(b) asks PO Nicoll to check his pockets. At 14:00, PO Nicoll searches § 87(2)(b)'s pockets, but does not appear to find the key. At 15:40, PO Nicoll asks PO Grasser and PO Holder if they have the key, but they both say no. At 16:00, § 87(2)(b) says to the officers, "That's fucked up, they lost the key." § 87(2)(b) tells the officers that the key was either in his pocket or in the vehicle, and that the officers were the only people who entered his pockets and the vehicle. At 16:45, PO Nicoll and PO Grasser search § 87(2)(b)'s pockets a second time for the key, but do not find it. § 87(2)(g)

At 19:00, PO Nicoll escorts § 87(2)(b) to the police vehicle. At 19:20, § 87(2)(b) tells PO Nicoll that he had the key in his pocket or inside the vehicle at the time of the stop. At 19:30, § 87(2)(b) says to PO Nicoll, "Or one of these guys has the key and is playing dumb." It is unclear from the footage who § 87(2)(b) is referring to, but he at 20:15, says that the officers lost the key to the vehicle.

PO Holder's BWC (Board Review 04) at 16:00, shows Sgt. Nicoll informing § 87(2)(b) that the officers cannot leave the vehicle in the roadway, and that the vehicle might be towed if the officers cannot find the key. At 17:00, PO Holder asks § 87(2)(b) if he has the key. § 87(2)(b) who appears upset, shrugs his shoulder, and shakes his head

suggesting that he did not have the key. At 18:00, Sgt. Espinal asks § 87(2)(b) if he has the key. It is unclear from the footage if § 87(2)(b) responds. At 18:44, Sgt. Espinal tells § 87(2)(b) that the vehicle might be towed if the officers cannot find the key. § 87(2)(b) asks Sgt. Espinal why the officers are going to tow the vehicle, when the officers lost the key. At 18:54, § 87(2)(b) says in a raised voice to Sgt. Espinal, “I don’t fucking have the key,” and that the officers already searched him. Sgt. Espinal replies that he was not the officer who searched § 87(2)(b). At 18:58, PO Holder approaches § 87(2)(b) and appears to search § 87(2)(b)’s jacket and pants pockets. § 87(2)(b) asks PO Holder why he is being searched again, and that the officers already “checked me three times.” At 19:00, Sgt. Espinal tells § 87(2)(b) that he is not answering the officers’ questions in a direct manner, and that they asked him if he had the key. At 19:15, § 87(2)(b) asks Sgt. Espinal how he would have the key when he never returned to the vehicle and had already been searched. At 19:20, PO Heisinger tells § 87(2)(b) that the previous searches were for marijuana and not the key. § 87(2)(b) tells the officers not to speak with him. At 20:05, PO Holder concludes his search of § 87(2)(b)’s person, but does not find the key. At 20:11, § 87(2)(b) says out loud, “They know I don’t have the key, they searched me before I got out of the fucking car.” Sgt. Espinal tells § 87(2)(b) that the officers do not care about his opinion.

PO Grasser’s BWC (Board Review 07) at 18:00, shows Sgt. Espinal asking PO Grasser if he has the key. PO Grasser replies no, and says he never saw the key to the vehicle. At 18:44, PO Grasser approaches § 87(2)(b) by the trunk of the vehicle, and § 87(2)(b) appears to complain that he has been searched at least three times. At 18:45, PO Grasser says to § 87(2)(b) “Alright, number four is coming,” and begins to search § 87(2)(b)’s jacket pocket. At 19:00, PO Nicoll, identified via investigation, says to PO Grasser, “Check his shoes.” § 87(2)(b) in a raised voice tone replies, “You see what I am saying. Why the fuck will I be standing on keys for?” and “Why the fuck will I keep the keys if I want to leave?” PO Grasser tells § 87(2)(b) to calm down and stop yelling. At 19:50, PO Grasser concludes his search of § 87(2)(b)’s person, but does not find the key. PO Grasser does not search § 87(2)(b)’s shoes. At 28:00, Sgt. Espinal finds the key in his pocket, and says he might have taken the key while § 87(2)(b) was being arrested but forgot about it. Sgt. Espinal gives the key to § 87(2)(b). At 28:43, Sgt. Espinal tells § 87(2)(b) that he does not apologize for the officers’ actions but apologizes for the “inconvenience.”

§ 87(2)(b) denied ever having the key to the vehicle, and said he informed the officers multiple times that he had the key, but that PO Holder and PO Grasser searched him anyways. § 87(2)(b) did not consent to the search of his person.

PO Grasser (Board Review 19) had no independent recollection of this incident, except that the officers thought the key was missing, but ultimately found it inside Sgt. Espinal’s pocket. PO Grasser did not recall searching § 87(2)(b)’s pockets, did not recall why he did so, nor did he recall if he suspected that § 87(2)(b) was in possession of the key to the vehicle. He also did not recall if § 87(2)(b) was considered under arrest at any point during this incident.

PO Holder (Board Review 20) acknowledged searching § 87(2)(b) a second time for the purpose of finding the vehicle’s key, but did not recall if he ever suspected that § 87(2)(b) was in possession of the key. PO Holder said that the officers found it strange that the key to the vehicle was missing, especially since they did not find it inside the vehicle or on § 87(2)(b)’s person, and that they thus had to look “everywhere” for the key, including the occupants of the vehicle. PO Holder said he searched § 87(2)(b) because § 87(2)(b) was the only other occupant of the vehicle, and that he did so to ensure that § 87(2)(b) did not have the key so as to narrow down the other areas in and around the vehicle the officers had to search. PO Holder acknowledged that § 87(2)(b) never returned to the vehicle after he was first ordered out and searched, and that he did not recall recovering any

keys from § 87(2)(b)'s pockets after the initial search, but said he lost sight of § 87(2)(b) after § 87(2)(b) was brought to the trunk of the vehicle, and therefore was not sure if § 87(2)(b) came into contact with the key at some point after he was first searched. PO Holder also said § 87(2)(b) was very uncooperative and refused to answer officers' questions about the key, and that although he did not recall, it was possible that § 87(2)(b)'s demeanor influenced PO Holder's decision to search § 87(2)(b) the second time.

Sgt. Espinal (Board Review 23) had no independent recollection of this incident, except that at some point he found the missing keys inside his pocket. Sgt. Espinal did not recall how the keys came to be in his pocket, but said he might have taken them from § 87(2)(b)'s hands when § 87(2)(b) exited the vehicle, and then unintentionally placed them inside his pocket. Sgt. Espinal did not recall suspecting § 87(2)(b) of being in possession of the vehicle's keys, did not recall observing any of the officers search § 87(2)(b) for the keys, nor did he recall instructing or authorizing any subsequent search of § 87(2)(b).

An officer can search an individual if the officer has probable cause to believe that the individual committed a crime, People v. DeBour 40 N.Y.2d 210 (1976) (Board Review 21).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) and § 87(2)(b) have been parties (Board Review 14).
- PO Holder has been a member of service for nine years, and has been a subject in 10 CCRB complaints, and 37 allegations, five of which were substantiated, and 11 of which are pending investigations:
 - Case 201502028 involved a substantiated discourtesy allegation. The Board recommended formalized training, and the NYPD imposed command level instructions.
 - Case 201804023 involved substantiated frisk and vehicle search allegations. The Board and the NYPD both recommended and imposed formalized training, respectively.
 - Case 201904264 involved a substantiated failure to provide RTKA cards. The Board and the NYPD both recommended and imposed command level instructions.
 - PO Holder has a total of seven vehicle search, frisk and search of a person allegations pleaded against him.
- PO Grasser has been a member of service for seven years, and has been a subject in six CCRB complaints, and 15 allegations, none of which were substantiated, and six of which are pending investigation. § 87(2)(g)
- Sgt. Espinal has been a member of service for 17 years, and has been a subject in 22 CCRB complaints, and 52 allegations, one of which was substantiated, and 13 of which are pending investigation.
 - Case 201907390 involved a substantiated allegation of interfering with a recording device. The Board recommended formalized training. The NYPD has yet to impose discipline.
 - § 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was returned from mediation.
- As of February 18, 2021, the New York City Office of the Comptroller had no record of a Notice of Claim being filed in regards this to complaint (Board Review 15).

- § 87(2)(b), § 87(2)(c)
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Squad No.: 1

Investigator: Enoch Sowah Inv. Sowah 09/29/2021
Signature Print Title & Name Date

Squad Leader: Mgr. Joy Almeyda 9.29.21
Signature Print Title & Name Date

Reviewer:
Signature Print Title & Name Date